

DDS Memorandum

DDS-01-01 Amended

To: All DDS Licensed and Certified Service Providers

From: David Fray, Director, DDS

Date: October 7, 2001

Subject: Amendments to DDS Policy 1087 and Memorandum DDS 01-01
for Criminal Record Checks

Amended Policy 1087 is attached. DDS is currently developing procedures to assist with this policy. Procedures will be distributed to each service provider upon completion. Training for service providers will be presented by DDS, following the distribution of procedures, to familiarize service providers with the policy and procedures.

In the interim, each service provider should use the guideline below that is most applicable to the provider's current hiring process:

- (a) If a provider currently has a pre-employment screening process that conducts criminal record checks on ALL employees, with documentation that is returned to the provider, that process should continue. Criminal record checks performed during this interim period will be utilized for a written determination by DDS for any employee who is found to have a criminal record. Effective August 13, 2001, providers should not knowingly hire an individual with a criminal record that would disqualify that person for employment under this policy.
- (b) If a provider does not currently have a process for pre-employment criminal record checks for ALL employees, the provider must begin to perform criminal record checks in compliance with Act 1548 for all individuals hired on or after August 13, 2001. Criminal record checks performed during this interim period will be utilized for a written determination by DDS for any employee who is found to have a criminal record. Effective August 13, 2001, providers should not knowingly hire an individual with a criminal record that would disqualify that person for employment under this policy

The DDS Licensure Section has responsibility for the development of procedures for the DDS Criminal Record Check program, and for ongoing management of the program. DDS Licensure will monitor compliance with this policy and all related procedures. Enforcement of the policy and related procedures by DDS Licensure will begin after procedures have been distributed and training has been completed.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY MANUAL

Policy Type	Subject of Policy	Policy No.
Administrative	Criminal Records Checks	1087

1. Purpose. The purpose of this policy is to delineate the requirements, allowances, exclusions, and general implementation of criminal record checks, in accordance with Act 1548 of 2001, hereafter referred to as “the Act”.
2. Scope. This policy is applicable to all licensed and certified providers of services for persons with developmental disabilities, all employees of those providers, and all applicants for employment by those providers.
3. Requirements under the Criminal Record Checks policy:
 - (a) Requirement for completion and notarization of a criminal record check form (which complies with the Act) and completion of a fingerprint card (when required) by any person to whom the provider intends to offer employment on or after August 13, 2001
 - (b) Requirement for conveyance of forms and fees within five (5) days to the Arkansas State Police Bureau of Identification for any person to whom a service provider intends to offer employment
 - (c) Requirement for initiation of Central Registry checks by a service provider prior to an offer of employment
 - (d) Requirement for temporary disqualification for employment by a service provider upon discovery of a criminal record, pending a determination by the Division of Developmental Disabilities Services (DDS), based on the provisions of the Act
 - (e) Requirement for either an Arkansas or a national criminal record check, dependent upon the residency and employment status of the individual
 - (f) Requirement for evidence that criminal record checks were performed on agency, temporary, and contract staff
 - (g) Requirement for notification by service providers to applicants and current employees that employment is contingent upon results of criminal record checks
 - (h) Requirement for a determination by DDS of an individual’s employment qualification or disqualification, based on the provisions of the Act, and for forwarding of this determination to the service provider
 - (i) Requirement for the denial or termination of employment by a service provider to any person determined by DDS to be disqualified for employment, based on the provisions of the Act
 - (j) Requirement for the maintenance of evidence of criminal record checks on applicants and current employees and copies of determinations by DDS

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- (k) Requirement that DDS issue a determination, based on the provisions of the Act, that a person is disqualified from employment with a service provider if that person has pled guilty or nolo contendere to or has been found guilty of certain offenses
- (l) Requirement that service providers not knowingly employ a person who has pled guilty or nolo contendere to or has been found guilty of certain offenses
- (m) Requirement that provisions of the Act not be waived
- (n) Requirement that conviction for certain offenses results in permanent disqualification from employment
- (o) Requirement for DDS to prepare forms and promulgate regulations
- (p) Requirement for DDS to establish remedies to be imposed for failure to comply with the Act
- (q) Requirement for all reports to remain confidential and restricted to the use of parties specified in the Act, and exempt from Freedom of Information Act (FOIA) disclosure, except to parties identified in the Act
- (r) Requirement for the immunity of parties for damages, other than for malicious acts or omissions
- (s) Requirement for completion of criminal record checks on all current employees of a service provider by October 1, 2002

4. Allowances under the Criminal Record Check policy:

- (a) Allowances for continued temporary employment of an individual, if no finding of fault records are found in a Central Registry, while awaiting the results of a criminal record check
- (b) Allowances for employment of an individual upon determination by DDS that the person is qualified for employment, based on the provisions of the Act
- (c) Allowances for employment of individuals with one conviction for certain offenses if conviction was ten years prior to application for employment
- (d) Allowances for employment of an individual convicted of a misdemeanor not related to exploitation, abuse, neglect, or sexual abuse of a person
- (e) Allowances for denial or revocation of a service provider's license for failure to obtain criminal record checks in compliance with the Act
- (f) Allowances for applicants and employees to challenge the completeness or accuracy of criminal history information to the Arkansas State Police, Bureau of Identification

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5. Exclusions from the Criminal Record Check policy:

This policy does not apply to:

- (a) A person who renders services subject to a professional license as a:
Licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech-language pathologist, audiologist, or nursing home administrator.
- (b) An individual who has maintained employment in the state for twelve months, has successfully completed a criminal record check, and submits evidence thereof.

6. Offenses.

- (a) These offenses may disqualify an individual from employment by a service provider, as referenced in items 4. (c) and (d) of this policy, and will require a determination from DDS:
 - 1. Manslaughter, as prohibited in § 5-10-104;
 - 2. Negligent homicide, as prohibited in § 5-10-105;
 - 3. False imprisonment in the first degree, as prohibited in § 5-11-103;
 - 4. Permanent detention or restraint, as prohibited in § 5-11-106;
 - 5. Robbery, as prohibited in § 5-12-102;
 - 6. Aggravated robbery, as prohibited in § 5-12-103;
 - 7. Battery, as prohibited in §§ 5- 13-201, 5-13-202, and 5-13-203;
 - 8. Aggravated assault, as prohibited in § 5-13-204;
 - 9. Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;
 - 10. Terroristic threatening in the first degree, as prohibited in § 5-13-301;
 - 11. Sexual solicitation of a child, as prohibited in § 5-14-110;
 - 12. Violation of a minor in the first degree and second degree, as prohibited in §§ 5-14-120 and 5-14-121;
 - 13. Incest, as prohibited in § 5-26-202;
 - 14. Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
 - 15. Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
 - 16. Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (a)(3);

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17. Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
18. Theft of property, as prohibited in § 5-36-103;
19. Theft by receiving, as prohibited in § 5-36-106;
20. Felony violation of the Uniform Controlled Substances Act, as prohibited in § 5-64-401;
21. Burglary, as prohibited in § 5-39-201;
22. Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
23. Stalking, as prohibited in § 5-71-229;
24. Forgery, as prohibited in Sec. 5-37-201
25. Breaking or entering, as prohibited in Sec 5-39-202;
26. Obtaining a controlled substance by fraud, as prohibited in Sec. 5-64-403; and
27. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed above.

(b) These offenses will permanently disqualify a person from employment by a service provider:

1. Capital murder, as prohibited in § 5-10-101;
2. Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
3. Kidnapping, as prohibited in § 5-11-102;
4. Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
5. Sexual abuse in the first degree and second degree, as prohibited in §§ 5-14-108 and 5-14-109;
6. Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
7. Felony adult abuse, as prohibited by § 5-28-103; and
8. Arson, as prohibited in § 5-38-301.

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7. Program Management and Compliance Monitoring. The DDS Licensure Section has the responsibility for managing the Criminal Record Check program and for monitoring compliance with this policy and all related procedures.

References: Arkansas Code Annotated (ACA) § 20-48-701 *et. seq.*,

Department of Human Services Policy 1052 and Procedures

Administrative Rules and Regulations Subcommittee of the Arkansas
Legislative Council: November 1, 2001